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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION

\_\_\_\_\_  
This Document Relates to:

ALL ACTIONS

Case No. 3:23-md-03084-CRB

**DECLARATION OF KYLE SMITH  
IN SUPPORT OF DEFENDANTS UBER  
TECHNOLOGIES, INC., RASIER, LLC,  
AND RASIER-CA, LLC’S OPPOSITION  
TO PLAINTIFFS’ MOTION TO COMPEL  
CUSTODIAL DISCOVERY**

Judge: Hon. Lisa J. Cisneros  
Courtroom: Courtroom G – 15th Floor

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**DECLARATION OF KYLE SMITH**

I, Kyle Smith, declare pursuant to 28 U.S.C. § 1746:

1. I am over the age of 18 and am a resident of Arlington, Virginia. I respectfully submit this declaration in support of Defendants Uber Technologies, Inc.’s, Rasier, LLC’s, and Rasier-CA, LLC’s (collectively, “Uber’s”) opposition to Plaintiffs’ Motion to Compel Custodial Discovery.

2. I am a partner at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, representing Uber in this MDL as well as in Judicial Council Coordination Proceeding No. 5188, *In Re: Uber Rideshare Cases*, Case No. CJC-21-005188 (the “JCCP”). I am a member in good standing of the Bar of the District of Columbia Court of Appeals and the Bar of the State of New York Court of Appeals, Third Department. I make this declaration based upon matters within my own personal knowledge. If called as a witness, I could and would competently testify to the matters set forth herein.

3. On September 29, 2023, JCCP Plaintiffs provided Uber a proposed list of potential custodians comprising 70 current and former Uber employees or directors.

4. On October 24, 2023, Plaintiffs took a Person-Most-Knowledgeable (“PMK”) deposition of Brad Rosenthal, an Uber employee, regarding Uber’s organizational structure, pursuant to Cal. Civ. Proc. Code § 2025.230. In advance of the PMK deposition, on October 17, 20, and 23, 2023, Uber produced to JCCP Plaintiffs documents including (1) present-day organizational charts for three members of Uber’s Executive Leadership Team (“ELT”), including a chart covering Uber’s Community Operations (“CommOps”) organization; (2) spreadsheets containing historical reporting line information for six ELT members spanning time periods from 2014 to 2022; and (3) historical reporting line information for Uber’s senior vice-president of communications and policy from 2016 to 2017.

5. Mr. Rosenthal testified on 20 topics during the October 24, 2023, deposition. *See* Rosenthal Second Am. Dep. Notice at 4–8. Mr. Rosenthal testified for more than seven hours, covering over 280 pages of testimony providing information about its organizational structure and individuals working within the organization (both as to topics relevant in this Action, and as to

1 topics beyond the scope of this Action). Also during that deposition, a copy of Mr. Rosenthal's  
2 notes made in preparation for testifying were produced to JCCP Plaintiffs and entered into the  
3 record as Exhibit 2.

4 6. Two days after the PMK deposition regarding Uber's organizational structure and  
5 key individuals, on October 26, 2023, JCCP Plaintiffs submitted a request for an additional 73  
6 potential custodians identified following the PMK deposition, bringing the total to 143 potential  
7 custodians proposed by JCCP Plaintiffs.

8 7. This updated list of 143 custodians was emailed to me by Brian Abramson, an  
9 appointed member of MDL Plaintiffs' Steering Committee. *See* Pretrial Order No. 4, ECF 152 at  
10 3. Mr. Abramson, and others at his law firm, were the primary points of contact during these fall  
11 2023 custodian discussions. Mr. Abramson conducted the PMK deposition examination of Mr.  
12 Rosenthal.

13 8. Both before and after the PMK deposition, Uber and the JCCP Plaintiffs had  
14 numerous back and forth exchanges to negotiate who would be a custodian in the matter. Those  
15 negotiations continued through October and November and involved significant give-and-take on  
16 both sides. These negotiations included thorough discussion and information-sharing about each  
17 side's position on the scope and identity of appropriate custodians, including the appropriate scope  
18 of time, subject matters, and seniority levels to be covered by the custodians. By the end of  
19 November 2023, Uber had provisionally agreed to 44 of JCCP Plaintiffs' 143 proposed custodians,  
20 and Plaintiffs were prioritizing only 102 of the 143 originally proposed custodians.

21 9. On November 30, 2023, in advance of an Informal Discovery Conference ("IDC")  
22 held in the JCCP on December 7, 2023, the Parties made a joint submission to the JCCP Court on  
23 outstanding disputed substantive discovery issues. Exhibit A to Plaintiffs' portion of that  
24 November 30, 2023 letter contained a table of Plaintiffs' 143 originally proposed custodians, with  
25 identification of the 44 of those whom were provisionally agreed upon, the 58 of those who were  
26 still in dispute, and the 41 of those whom Plaintiffs were no longer prioritizing.

27 10. In sum, the negotiations with the JCCP Plaintiffs in September through December  
28 2023 included 13 out of the 18 custodians whom Uber is now propounding and MDL Plaintiffs

1 are now resisting (even though JCCP Plaintiffs advocated for their inclusion over the course of  
2 many months in late 2023), namely, Emilie Boman, Akankshu Dhawan, Camiel Irving, Brian  
3 Johnson, Elise Maiolino, Lourdes McLoughlin, Susan Muerhcke, Livia Natsumeda, Rebecca  
4 Payne, Shyrose Razwani, Emily Richter-Eason, Eric Schroeder, and Christopher Weber.

5 11. More specifically:

- 6 a. Via their September and October 2023 custodian requests, JCCP Plaintiffs  
7 requested 13 of the 18 custodians that Uber is proposing for inclusion in the  
8 MDL but which MDL Plaintiffs are now opposing.
- 9 b. Mr. Rosenthal's PMK deposition transcript, or the deposition topic notes  
10 marked at Exhibit 2 at this deposition, includes 12 of the 18 custodians.
- 11 c. JCCP Plaintiffs and Uber were in agreement on 9 of the 18 custodians as of  
12 the December 7, 2023 informal discovery conference. JCCP Plaintiffs  
13 identified a further 4 of the 18 custodians as in dispute at that time. Thus,  
14 13 of the 18 custodians were clearly at issue as of the December 2023  
15 informal discovery conference.

16 I declare under penalty of perjury of the laws of the State of California that the foregoing  
17 is true and correct. Executed on August 29, 2024, in Arlington, Virginia.

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19 /s/ Kyle Smith

20 KYLE SMITH  
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